

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

SHAYNE BERTELSEN,

Plaintiff,

vs.

PETE DUNHOP, WARDEN;  
CATHERINE JOHSON, ASSISTANT  
WARDEN; ATTORNEY GENERAL  
OF THE STATE OF MONTANA,

Defendants.

CV 21-124-GF-BMM-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this case on February 16, 2022. (Doc. 6). Judge Johnston recommended that the matter should be DISMISSED and that the dismissal should count as a strike pursuant to 28 U.S.C. § 1915(g). (*Id.* at 7–8).

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error.

*McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d

422, 427 (9th Cir. 2000) (citations omitted). The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

## ORDER

Accordingly, **IT IS ORDERED:**

1. This matter is DISMISSED. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
2. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.
3. The Clerk of Court shall have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because the Complaint fails to state a federal claim upon which relief may be granted.

DATED this 4th day of April, 2022.



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Brian Morris, Chief District Judge  
United States District Court